part and parcel of the common law of England that was in operation at the commencement of the Constitution [*Ong Ah Chuan* v. *Public Prosecutor*[3] (at page 670)]. We can see nothing in the statutory provision sought to be impugned before us to infringe the proposition enunciated. There is nothing arbitrary, fanciful or oppressive in the legislatively defined sentence for the specific offence in question committed under the 1971 Act. Lord Diplock said in *Hinds & Ors.* v. *The Queen*[4] (at page 221): "In the exercise of its legislative power, Parliament may, if it thinks fit, prescribe a fixed punishment to be inflicted upon the offenders found guilty of the defined offence ...".

The Supreme Court of India in *Maru Ram* v. *Union of India*[5] upheld the validity of an Act which required offenders awarded a life sentence for an offence for which death was a permissible penalty, and offenders whose death sentence was commuted to a term of life imprisonment, to undergo a minimum detention of fourteen years. In *Carmona* v. *Ward*[6] the Supreme Court of the United States of America denied a writ of certiorari to challenge the constitutionality of a mandatory life sentence imposed under a New York Law for the possession of an ounce of a substance containing cocaine. In *Rummel* v. *Estelle*[7] the Supreme Court of America by a majority decision upheld a statute which authorised a mandatory sentence of life imprisonment on a third conviction of a felony less than a capital felony. The principle underlying these decisions apply equally in the case before us in relation to the mandatory nature of the maximum term of the sentence imposable by a specific statutory definition for a specific offence. The legislature in doing so no doubt had in mind the object and purpose to be achieved by such a provision and it cannot accordingly be arbitrary in any sense of the word.

On the contention that the specified term for the duration of the natural life of the person sentenced violates the equality provisions in Article 8(1) of the Constitution, we would refer to the speech of Lord Diplock in *Ong Ah Chuan (ante)* (at page 674) where he says that the Singapore constitutional provision with regard to equality [which textually accords *totidem verbis* with our Article 8(1)] is not concerned with equal punitive treatment for equal moral blameworthiness but is concerned with equal punitive treatment for similar legal guilt. In matters relating to equal protection the basis of approach is the identification of legislative purpose and a reasonable classification is one that includes all persons who are similarly placed with respect to the purpose of the law. We would refer in elaboration and support to the decision of this court in *Public Prosecutor* v. *Lau Kee Hoo*[8] and also to *Maru Ram* referred to earlier.

We accordingly, at the conclusion of argument before us, answered the question posed for our consideration in the negative. The sentence prescribed in the 1971 Act is constitutional and valid, and we might perhaps just add that the existence of executive powers of clemency could well militate against the rigours of the sentence sought to be impugned by consideration on a case to case basis.

Order accordingly.

Solicitors: *Karpal Singh & Co.*

SYARIKAT KEWANGAN MELAYU RAYA BHD. v. MALAYAN BANKING BHD.

[F.C. (Salleh Abas C.J. (Malaya), Mohamed Azmi & Syed Agil Barakbah F.JJ.), June 22 & December 22, 1983]

[Kuala Lumpur – Federal Court Civil Appeal No. 302 of 1982]

Land Law – Charged land – Application for sale – Land subject to two charges – Notice of default – Whether defective – Notice citing both charges and lumping together sum due under both charges – Interpretation and General Clauses Ordinance, 1948, s. 2(1) – National Land Code, ss. 241, 254, 268 and Form 16D.

In this case the appellant appealed against the decision of Peh Swee Jin J. in which he dismissed the application to set aside the order of the Collector of Land Revenue that the land be sold for failure to comply with two notices of default in Form 16D to pay the sum of $2,840,826.94 due to the respondent under two charges. The grounds of the appellant's application were briefly –

(i) the heading of the two notices in Form 16D referred to "Notice of Default with respect to a charge" and not with respect to "charges", and whereas two charges and not merely one were shown in the Schedule to both the statutory notices. Consequently, by virtue of Section 436 and the Tenth Schedule to the National Land Code, there was non-compliance with Form 16D and both notices were therefore invalid and bad in law;

(ii) the respondent ought to have issued a separate statutory notice for each of the two charges, and each notice should contain the outstanding sum under each charge. To lump together all the amount due under both

charges was bad in law and would render both notices ineffective.

Held: (1) there was no merit in the argument of counsel for the appellant that the learned judge erred in holding that the two notices had complied with Form 16D and were therefore effective and good in law. The learned judge has sufficiently dealt with the matter by reference to Item 95 in section 2(1) of the Interpretation and General Clauses Ordinance, 1948, which provides in effect that words and expressions in the singular include the plural and words and expressions in the plural include the singular;

(2) although there were two charges in this case, they related to the same land, the same parties were involved and the overdraft facilities were kept in one and the same account in the respondent's bank. Merely because the notices contained both the charges and the amount due from each was combined it could not be said that the appellant was thereby prejudiced or misled. The breach and non-compliance with the notices had been admitted and so was the total amount due from both charges. There was no evidence that the respondent had at any time tried to mislead or prejudice the appellant. There was therefore nothing unjust in the order of sale being granted by the Collector.

Case referred to:

(1) *Tan Kai Kok* v. *Thor Teik Seng* [1935] M.L.J. 91.

FEDERAL COURT.

P.S. Ranjan for the appellant.
Too Hing Yeap for the respondent.

Cur. Adv. Vult.

Mohamed Azmi F.J. (delivering the Judgment of the Court): This is an appeal against the decision of Peh Swee Chin, J. dated November 12, 1982 in which he dismissed the appellant/chargor's Originating Motion to set aside the order of the Collector of Land Revenue, Klang made pursuant to Section 263 of the National Land Code that the land held under E.M.R. 7188, Lot 1800, Mukim of Klang, be sold by public auction at a reserved price of one million ringgit for failure to comply with two notices of default in Form 16D to pay the sum of M$2,840,826.94 due to the respondent/chargee under charge presentation No. 31438, Volume XVII, Folio 97 dated April 10, 1965 and No. 34236, Volume XXI, Folio 63 dated September 21, 1967.

The evidence before the learned Judge consisted of an affidavit in support of the motion sworn on July 30, 1982 by Norma bt. Mohd. Noar, a Secretary of the appellant and an affidavit in reply sworn on September 6, 1982 by Ng Shang Peng, the Manager of the Kuala Lumpur Main Office of the respondent. The facts in both affidavits were never in dispute and they could be stated as follows. The land EMR 7188, Lot 1800 registered in the name of the appellant, was charged to the respondent on April 10, 1965 to secure loan facilities in the sum of $400,000/-. On September 21, 1967, a second charge over the same land was created by the appellant to secure a further loan facility in the sum of $180,000/-; thus increasing the loan facilities to $580,000/-. Both the charges were executed by the appellant in favour of the respondent to secure one overdraft account namely Account No. 3-205. When the appellant defaulted in repaying the overdraft facilities, respondent served a letter of demand on the appellant dated October 9, 1980 demanding repayment of the sum of $2,374,382.24 due with interest within seven days (see exhibit "MBB1"). The appellant failed to comply with the letter of demand, and the respondent's next step was to serve the appellant with a statutory notice in Form 16D under Section 254 of the National Land Code dated November 13, 1980 demanding the said sum of $2,374,382.24 as being the balance due at September 10, 1980 and requesting it to remedy the breach within one month (see exhibit "NMN 1"). Before the expiry of the remedial period of one month, for reason which was not disclosed in the affidavit of Ng Shang Peng, another notice in Form 16D dated November 28, 1980 (exhibit "NMN 2") containing identical demand and identical words and schedule as exhibit "NMN 1" was served on the appellant. The two identical notices under Section 254 NLC, though dated differently are now reproduced:-

"NATIONAL LAND CODE
FORM 16D
(SECTION 254)
NOTICE OF DEFAULT WITH RESPECT TO A CHARGE

To: Syarikat Kewangan Melayu Raya Sdn. Bhd.,
Lot 14.07, 14th Floor, Wisma Stephens,
88, Jalan Raja Chulan, Kuala Lumpur.

Chargor under the Charges described in the schedule below of the land so described.

Whereas you have committed a breach of the provisions of these Charges by failing to make payment on demand the sum of Ringgit 2,374,382.24 being the whole outstanding balance on your account as at September 10, 1980 with interest thereon at the rate of 9% p.a. with monthly rests from September 11, 1980 to the date of payment, or any part thereof pursuant to a Notice in writing dated October 9, 1980 and received by you on or about October 9, 1980.

And whereas the breach has continued for a period of

at least one (1) month prior to the date of this Notice; we, as Chargee, by virtue of the powers conferred by Section 254 of the National Land Code, hereby require you within the period of one (1) month from the service of this Notice to remedy the breach.

And take notice that if you fail to remedy the breach within that period, we shall apply for an Order of Sale.

Dated this day of 1980.

Malayan Banking Berhad
by its Attorney:
Sgd?
Signature (or other form of execution) by or on behalf of Chargee.

SCHEDULE OF LAND * AND INTEREST					
*Town/ Village Mukim	* Lot/ Parcel/ L.O. No.	Description and No. of Title	Share of land (if any)	Registered No. of * lease/sub-lease (if any)	Registered No. of Charge (if any)
(1)	(2)	(3)	(4)	(5)	(6)
Mukim of Klang	Lot 1800	EMR No. 7188	the whole	Nil	Charge Presentation No. 31438 Volume XVII Folio 97. Charge Presentation No. 34236 Volume XXI Folio 63."

When the appellant failed to remedy the breach within the time given in the second statutory notice (exhibit "NMN 2") the respondent applied to the Collector of Land Revenue for foreclosure under the provisions of Part Sixteen, Chapter 3 of the National Land Code, and after conducting an enquiry, the Collector made the order dated June 3, 1982 for the property to be sold by public auction.

Now, the appellant's application to set aside the Collector's order was not grounded on the fact that the respondent had served him with two identical notices under Section 254 of the Code in November, 1980. On this point, the two notices could have been issued *ex abundanti cautela* so that each charge would have a separate statutory notice, although each notice described the breach as the combined sum due under both the charges. If so, we are of the view that the second notice (exhibit "NMN 2") had superseded the first notice (exhibit "NMN 1") with the result that if the appellant had remedied the breach within one month of the service of the second notice, no order of sale could have been made by any Collector since the remedial period had been extended. The grounds of appellant's application before the learned Judge was in fact contained in paragraphs 7 and 8 of the affidavit of Norma bt. Mohd. Noar. Briefly they were:-

(i) the heading of the two notices in Form 16D as reproduced above referred to "Notice of Default with respect to a charge" and not with respect to "charges", and whereas two charges and not merely one were shown in the Schedule to both the statutory notices. Consequently, by virtue of Section 436 and the Tenth Schedule to the National Land Code, there was non-compliance with Form 16D and both notices were therefore invalid and bad in law;

(ii) the respondent ought to have issued a separate statutory notice for each of the two charges, and each notice should contain the outstanding sum under each charge. To lump together all the amount due under both charges was bad in law and would render both notices ineffective.

On the first ground, we find the learned Judge has sufficiently dealt with the matter by reference to Item 95 of section 2(1) of the Interpretation and General Clauses Ordinance 1948 which is the fore-runner of section 4(3) of the Interpretation Act, 1967. Section 4(3) provides, "Words and expressions in the singular include the plural, and words and expressions in the plural include the singular." Further, we also note that with regard to Forms, section 62 of the Interpretation Act which supersedes section 7 of the Interpretation and General Clauses Ordinance provides, "Any written law prescribing a form shall be deemed to provide that an instrument or other document purporting to be in that form shall not be invalidated by reason of any deviation from the form if the deviation has no substantial effect and is not calculated to mislead." In fact, the last column of the Schedule to Form 16D anticipates the possibility of more charges than one to be included in one notice, and this is further fortified by section 241(2) read with section 268(1)(e) which empowers the creation over the same property of a second and subsequent charges, and also empowers the Collector to apply the purchase money arising on any sale in the repayment of the subsequent charges. As regards section 436 NLC relied by counsel for the appellant, it merely provides that, "the supplementary provisions in the Tenth Schedule shall have effect in relation to the forms in the First Schedule and in relation to the procedure to be followed in Registries and Land Offices." Apart from the fact

that Form 16D is one of the many forms provided in the First Schedule to the NLC, we fail to see in what manner the respondent's two notices in Form 16D had materially contravened the additional provisions in the Tenth Schedule. Having regard to the provisions of section 4(3) and 62 of the Interpretation Act, we find no merit in the argument of counsel for the appellant that the learned Judge erred in holding that the two notices had complied with Form 16D and were therefore effective and good in law.

On the second ground, it is appellant's argument both here and in the court below that by citing the two charges in both notices and by lumping together the outstanding sum due under both charges, the appellant/chargor would not know how much was exactly due under each of the two charges. In concluding the appellant's objection to be purely technical, the learned Judge relied on the judgment in *Tan Kai Kok* v. *Thor Teik Seng.*[1] In that case Burton, J. refused to deal with a purely technical objection that the chargee had failed to specify the time to remedy the breach in the notice of default, on the ground that it misled no one and would not avail to set aside an order otherwise good. Before us, it is also argued that the defect is substantial enough to prejudice the appellant to rectify the breach. In our view, whether a notice of default with respect to a charge or charges in Form 16D is bad in law would depend on whether the chargor has been prejudiced or misled by any defect in the notice so as to render the granting of the order of sale unjust, and this in turn must necessarily depend on the circumstances of each particular case. Now, what were the circumstances of the present dispute? Although there were two charges, they related to the same land; the same parties were involved; and the overdraft facilities were kept in one and the same account in respondent's bank. It would appear that the second charge was created in order to secure the increase in the limit of the overdraft facilities from $400,000/- to $580,000/- and as such it must be difficult to apportion as to which sum due was referable to which charge, unless the appellant had requested for a separate account in the bank for each charge. As the appellant knew all along that he had only one account with the respondent for the two charges, there was no way how it could have been prejudiced or misled. Merely because the two notices contained both the charges and the amount due from both was combined, it could not be said on balance that the appellant was thereby prejudiced or misled. The breach and non-compliance with the notices had been admitted, and so was the total amount due from both the charges. There was no evidence that the appellant had ever sought information from the respondent how much was due from each charge so as to enable him to make separate repayments. But the fact remained, even after the letter of demand dated October 9, 1980 (exhibit "MBB 1") was served, the appellant did not show any intention to rectify the breach, nor during the remedial period of one month after service of the two statutory notices. Further, there was not an iota of evidence that the respondent had at any time tried to mislead or prejudice the appellant. There was therefore nothing unjust in the order of sale being granted by the Collector. In the circumstances of this particular case we find that the appellant's second ground must also fail.

We accordingly dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Ng Ek Teong & Partners; Shook Lin & Bok.*

TRACTORS MALAYSIA BHD. v. SOUTHERN ESTATES SDN. BHD. & ANOR.

[F.C. (Lee Hun Hoe C.J. (Borneo), Mohamed Azmi & Syed Agil Barakbah F.JJ.) October 12 & December 28, 1983]

[Kota Kinabalu – Federal Court Civil Appeal No. 146 of 1982]

Practice & Procedure – Appeal – Appeal against order made in chambers – No application made for further argument in court – When time for appeal begins to run – In absence of certificate by Judge that he requires no further argument time for appeal begins to run from date when order was pronounced – Mistake of solicitor – Rules of Federal Court 1980, r. 56A – Courts of Judicature Act, 1964, s. 68(2).

In this case the disputes arose out of nineteen agreements under which the appellants had allegedly sold under hire-purchase 19 Caterpillar logging equipment to the first respondent company on the guarantee of the second respondent. In Civil Suit 189 of 1969 the appellants obtained summary judgment against the first respondent for the sum of $959,896.92 and in Civil Suit 190 of 1969 they obtained a consent judgment against the second respondent for the sum of $718,266.85. The second respondent filed a claim to set aside the consent judgment but on appeal to the Privy Council, the appellants suceeded in restoring a High Court order of dismissal of respondent's claim. Both respondents then brought an action to set aside the